

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-65038; File No. SR-NASDAQ-2011-100)

August 5, 2011

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Modify the Defined Term “Closed-End Fund” in Rules 5910 and 5920

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on July 26, 2011, The NASDAQ Stock Market LLC (“Nasdaq”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,³ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the defined term “Closed-End Fund” in Rules 5910 and 5920 to include business development companies.

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.⁴

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 17 C.F.R. 240.19b-4(f)(6).

⁴ Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at <http://nasdaq.cchwallstreet.com>.

5910. The NASDAQ Global Market

(a) Entry Fee

(1) – (2) No change.

(3) A closed-end management investment company [registered] regulated under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for listing on the Nasdaq Global Market shall pay to Nasdaq an entry fee of \$5,000 (of which \$1,000 represents a non-refundable application fee).

(4) – (10) No change.

(b) – (f) No change.

5920. The Nasdaq Capital Market

(a) Entry Fee

(1) – (2) No change.

(3) A closed-end management investment company [registered] regulated under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for listing on the Nasdaq Capital Market shall pay to Nasdaq an entry fee of \$5,000 (of which \$1,000 represents a non-refundable application fee).

(4) – (9) No change.

(b) – (e) No change.

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II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

A business development company is a type of closed-end management investment company that is regulated under the Investment Company Act of 1940 (the “1940 Act”).⁵ While Nasdaq has historically treated business development companies as closed-end funds for purposes of computing listing fees, in defining a closed-end fund for these purposes Nasdaq inadvertently excluded business development companies. Specifically, Nasdaq defines a closed-end fund in Rules 5910(a)(3) and 5920(a)(3) as a closed-end management investment company that is registered under the 1940 Act. While business development companies are regulated under the 1940 Act, they are not registered under the 1940 Act.⁶

It was never Nasdaq’s intent to exclude business development companies from the definition of a closed-end fund and Nasdaq has historically treated them as closed-end

⁵ 15 U.S.C 80a-1 et seq.

⁶ Under Section 2(a)(48) of the 1940 Act, 15 U.S.C. 80a-2(a)(48), a business development company is a closed-end company which elects to be subject to certain provisions of the 1940 Act. Such a company is exempt from the other requirements of the 1940 Act, including the registration requirements of Section 8, 15 U.S.C. 80a-8, pursuant to Section 6(f)(1), 15 U.S.C. 80a-6(f)(1).

funds⁷ and charged them the fees applicable to closed-end funds. In this filing, Nasdaq proposes to modify the definition of a closed-end fund contained in Rules 5910(a)(3) and 5920(a)(3) to include business development companies. As revised, a closed-end fund will be defined as a closed-end management investment company regulated under the 1940 Act.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁸ in general, and Section 6(b)(5) of the Act⁹, in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, Nasdaq believes the proposed rule change will clarify Nasdaq's treatment of business development companies as closed-end funds, thereby eliminating any confusion surrounding Nasdaq's rules.

⁷ For example, when Nasdaq recently adopted a cap on Listing of Additional Shares fees for closed-end funds, Nasdaq described a closed-end fund as a type of company "regulated" under the 1940 Act. Exchange Act Release No. 63732 (January 19, 2011), 76 FR 4401 (January 25, 2011) (SR-NASDAQ-2011-007). In adopting this cap, Nasdaq's intent was for it to apply to business development companies and, in fact, the rule change adopting a cap for all closed-end funds replaced a filing where Nasdaq proposed to adopt the cap only for business development companies. See SR-NASDAQ-2010-119 (withdrawn), available at <http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2010/SR-NASDAQ-2010-119.pdf>.

⁸ 15 U.S.C. 78f.

⁹ 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6)¹¹ thereunder in that it effects a change that: (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. In addition, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. The proposed rule change will clarify the treatment of business development companies under Nasdaq's rules and consistent with the way Nasdaq has historically applied those rules. Therefore, Nasdaq believes it does not significantly affect the protection of investors or the public interest or raise any novel or significant regulatory issues.

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2011-100 on the subject line.

Paper comments:

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2011-100. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2011-100 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Elizabeth M. Murphy
Secretary

¹² 17 CFR 200.30-3(a)(12).